

# Editorial / By Stan Veit

Much ado about software in the legislatures of various states. In Illinois the house has a bill before it that would essentially destroy your right to resell software that you have bought and paid for. The legislators have been sold a bill that there are billions of dollars lost due to piracy and this law will put a stop to it! Read more about this threat in an article by L.J. Kutten. The force behind this anti-consumer attack is ADAPSO, The Computer Software and Services Industry Association and the large software manufacturers.

On the other side of the fence, California Assemblywoman Gloria Molina has introduced a bill in the California legislature to negate attempts to disclaim the implied warranties of merchantability and fitness for a particular purpose. (The weasel words where the software manufacturer disclaims that his product will do what it is supposed to do.) The bill would make software developers and retailers insurers of their products. It would also not limit such warranties for a period of time, a purchaser who bought software with defects could insist on corrections or replacement and if the remedies were not effective, the purchaser could revoke the software contract at any time within a one year period.

Naturally, ADAPSO is up in arms about this long overdue piece of pro-consumer law and is bringing all its heavy guns to bear to defeat it. If you live in California, write to your legislator to indicate your support of A.B 1507. Write Now!

Having attended the Comdex Show in Atlanta and being scheduled to go to NCC, I sat out the Spring CES and sent Randy Holcomb in my place. The marketing people at our booth were amazed at the reception that Randy received from the TI 99ers. There is no group of users more enthusiastic than the TI 99/4A fans. Considering they have been "on their own" for so long with almost no corporate support, I find this a bit amazing myself. It is because of strong user support that *Computer Shopper* keeps these sections going although there is almost no advertising support for them.

## Is The MSDOS Clone Market Turning To CCP/M?

A strange thing is happening among manufacturers of IBM

clones and it will have an impact on the future of operating systems here in the United States.

When the East Asian computer makers realized that the market was going to IBM PC's they stopped trying to make Apple II clones and quickly switched to 16-bit 8088 and 8086 IBM clones. Right away they ran into the problem of obtaining a legal BIOS that would still maintain "IBM Compatibility." They first used the BIOS developed by the ERSO organization in Taiwan but that was judged to be an infringement by IBM and U.S. Customs. Other manufacturers developed inhouse BIOS or sought help from U.S. software houses and came up with BIOS which may or may not prove to be legal. The result of all the enforcement of IBM's rights has been to discourage the boast of "IBM Compatibility" in the industry. Many manufacturers have turned to Digital Research and licensed the use of Concurrent CP/M-86 (CCP/M-86) and are sending their machines to the United States with no fear of legal difficulties. CCP/M-86 is a multi-tasking operating system which can emulate MSDOS. It has an optional PC mode that allows it to run "standard" software written for PC DOS (MSDOS). There are a lot of such "standard" systems such as Multimate, Wordstar, dBase, SuperCalc II and III. In addition DRI has a windowing module called XIOS which helps run programs like Lotus 1,2,3. The point of all this discussion is that more and more so called "clones" are "Going Legit" and taking out licenses from DRI to use CCP/M-86. Thus Digital Research which lost out to Microsoft in the first round can make a strong comeback. There is really no reason why all 16-bit computers have to be IBM compatible except for all the software available for these machines. If much of the "standards" will now run on non-PC compatible computers who will be the new "standard" IBM, or the new majority?

I have been getting a lot of letters from readers commenting favorably on the quality of *Computer Shopper's* editorial content. I don't print all these in Feedback Forum because it would seem like we were getting a swelled head. I just want to say "thanks" to all who offered Kudos to our writers. We will continue to try to please

you and we can stand a few brickbats when we fail. We don't expect you to agree with everything we print and we will make errors from time to time. Thanks also to those who write in to point them out. If you look at our masthead you will find the names of some of the best writers in this industry. They cover a broad range of subjects and we are always responsive to your letters on what you would like to know about.

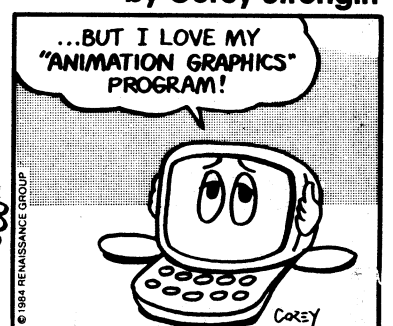
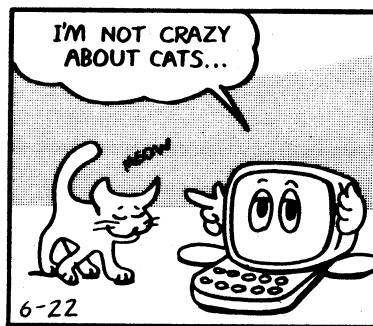
I am still looking for a Heath/Zenith columnist. The

previous one did a good job but wanted to duplicate the MSDOS information we covered in the PC/MSDOS section. This is a problem with so many manufacturers making PC-compatibles. There are really few differences between compatibles and after a few columns the writers run out of justification to keeping a section beyond brand loyalty. In the case of Heath/Zenith I want coverage of HDOS and CP/M machines as well as MSDOS.

The same thing is going to happen to our Sanyo and Tandy sections. It is getting harder and harder to find interesting and new things to write about TRS-80, 8-bit computers already. Look at 80 Micro if you don't believe this. As Sanyo moves into IBM compatibility with their 800 series and away from the 500 series they also will blend into the MSDOS section.

I deplore this trend but we only report on the industry and that's what's happening. ●

### LINDENHURST



by Corey Strongin

## Software On The Air

By Gene Bethold

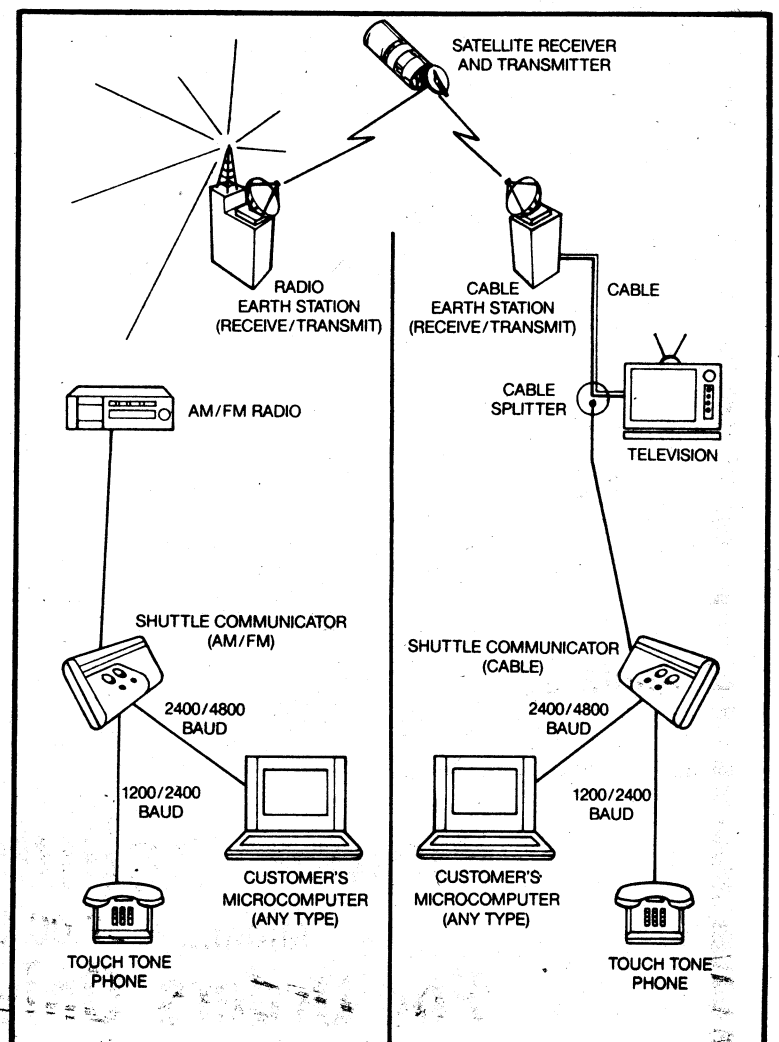
The distribution methods of PC software defies all marketing principles. Some software is locked into sealed containers and the consumer is "licensed" to use it only after opening the package and thereby activating a pseudolegal document that promises nothing on the part of the licensor and everything on the part of the licensee. Other software is freely given away to club members, or deposited in data bases on public networks and bulletin boards. In between these two extremes of distribution there are thousands of small software publishers hoping to reap some reward for their time in developing good programs.

Now there is a new method of distributing software called Softcasting. Softcasting is the broadcasting of digital software over the radio or over TV cable networks. It involves the conversion of digital signals into sound and the broadcasting of these tones by the radio station just as any other audio tones are broadcast. At the receiving end, any radio tuned to the broadcasting station can receive the tones which are routed to a special modem attached to the radio receiver. The modem converts the tones back into digital signals which

are then fed into the serial I/O port of a computer. The same procedure is used when transmitting over the cable of

a TV cable network. In radio transmission either FM or AM

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### Your Right To Resell Continued from page 10

from Lord Coke's day to ours, because obnoxious to the public interest. The scheme of distribution is not a system designed to secure to the plaintiff and to the public a reasonable use of its machine within the grant of the patent law, ... which, if given effect, would work great and widespread injustice to innocent purchasers, for it must be recognized that not one purchaser in many would read such a notice, and that not one in a much greater number, if he did read it, could understand its involved and intricate phraseology, which bears many evidence of being framed to conceal rather than to make clear its real meaning and purpose. It would be a perversion of terms to call the transaction intended to be embodied in this system of marketing plaintiff's machines a "license to use the invention." Id. at 500.

Modernize the phrasology of this agreement you have the type of agreement the software developers are using today.

This bills will not prevent the "reverse engineering, decompiling, [and] disassembling" of software. In *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1973) the United States Supreme Court said that while there was no inherent conflict between Federal patent law policies and state trade secret laws, that state laws do not protect against discovery by "fair and honest means, such as ... reverse engineering." (Id at 476.)

Additionally, these bills would give a perpetual protection to software, something that is neither granted nor intended by either copyright or patent law.

**The Importance of Victor and Kewanee:** The reason that Victor and Kewanee are important even though they deal with Federal patent law is that Courts have recognized

"[w]here precedent in copyright cases is lacking, it is appropriate to look for guidance to patent law "because of the historic kinship between patent law and copyright law." *Harris v. Emus Records Corp.*, 734 F.2d 1329, 1333 (9th Cir. 1984).

**Preventing Translation and Derivate Works:** These bills are unnecessary to prevent translation and the creation of derivative works. The right to prepare translation and derivative works is an exclusive right of the owner of a copyright. The relevant law is the 1976 Copyright Act, 17 U.S.C. Section 106:

Subject to sections 107 through 118 the owner of a copyright ... has the exclusive right to do and authorize any of the following:

- ...
- 2. to distribute derivative works based upon the copyrighted work.

A Federal court case involving software has already held that the copyright owner has sole right to make the translation. See *Whelan Associates, Inc. v. Jaslow Dental Laboratory*, 225 U.S.P.Q. 156 (E.D.Pa. 1985).

The bill cannot prevent further transfer given the clear Congressional intent of the First Sale Doctrine and the Software Protection Act of 1980. The First Sale Doctrine says that once a copy of a work has been sold lawfully by the copyright owner, the buyer can retransfer that copy. This doctrine is codified at 17 U.S.C. Section 109 and reads as follows:

"The owner of a particular copy...lawfully made under this title, or any person authorized by such owner, is entitled, without the authority of the copyright owner, to sell or otherwise dispose of the possession of that copy..."

The section and its predecessors have always been interpreted to read that once a First Sale has occurred on a particular copy, that the copyright owner has no further right to control distribution regardless of any license term to the contrary. For example in *Burke & Van Heusen, Inc. v. Arrow Drug, Inc.*, 233 F. Supp. 881 (E.D.PA. 1964), the Court disregarded the restrictive license that limited transfer. It said:

The fact that the defendants knew of the restrictions which were part of the license agreement between plaintiff and Beecham neither binds defendants to a contract to which they were not parties nor widens the scope of control granted by the Copyright Act.

What does this mean? If the software is copyrighted (which it most assuredly is) and a Federal Court determines that a First Sale has taken place (the mere fact that one party claims it is only "licensing" the software is not controlling) then the fact that there is a license agreement that says the software may not be resold or otherwise transferred, is of no effect.

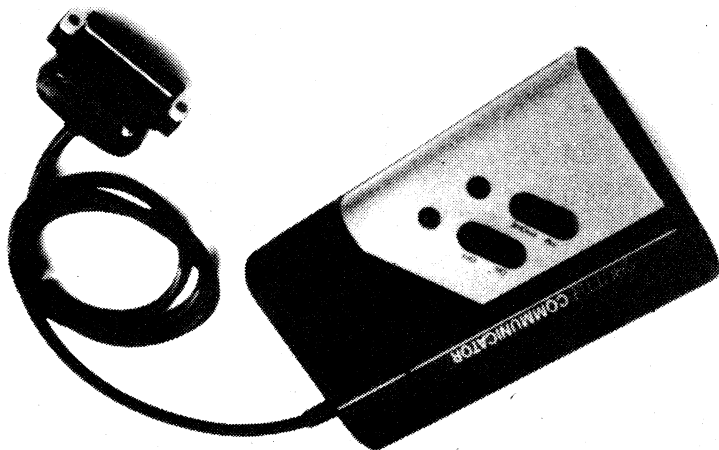
These bills cannot "prohibit the copying of the copy ... or any purposes or limitations on the purposes for which copies ... can be made" given the specific Federal mandate of the 1980 Software Protection Act. This law modified the 1976 Copyright Act and added 17 U.S.C. Section 117. This section states it is not an infringement for the owner of a copy of a computer program to make (1) adaptations and copies that are an essential step in using the computer program or (2) make archival copies.

There are sound public policy reasons for both exceptions. The first exception is based on the acknowledgement that there is no uniformity in computer equipment. Take the following examples:

1. You buy an Apple Macintosh computer and a program that only contains an Apple Imagewriter (this makes the printer work) that only works on the Apple Imagewriter printer. You already own an Epson printer and do not want to buy an Imagewriter. You buy a \$39.95 computer program, Epstart, from Softstyle. Using the program, you modify the other program to work with the Epson printer.

If these bills become law (1) the consumer can be legally prohibited from modifying the program; and (2) an Illinois

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stations may be used, however while FM transmission at 4800 Baud are normal, the AM stations can only use 2400 Baud maximum because of the narrow bandwidth of the AM station signal. The modem called The Shuttle Communicator is a receive-only modem that sells for only \$70 and is thus available to any PC owner. It does have a limited two way communication capability over the telephone network by connecting the modem to the telephone line to receive data at 1200 Baud and by using the touch-tone telephone keys to signal to the transmitter source.

#### The National Digital Network

The broadcasting of software over the radio has been going on for some time in Seattle, WA over station KAMT. The weekly 30-minute "Softcast Show" hosted by Robert E. Hardwick is a computer oriented talk show devoted to

topics of interest to personal computer users. Midway in the show, Hardwick describes the programs to be transmitted and tells users to ready their Shuttle Communicators for reception. After a one-second "BEEP" the 4800 Baud transmission occurs for 10 to 12 seconds. Of course listeners without modems also hear the tones (which are identical to those made by a software cassette player with the plug removed). However since mostly computerists are tuned in, this does not bother them at all. (Strangers must think they have tuned in on some new-wave rock!)

The costs of the software and the talk show are met by advertising on the local station. Sponsors may be software companies who broadcast demos of their programs, computer stores or services or any business as a public service. This seems like an excellent method of making software familiar to users. It is now

possible to Softcast even copy protected programs eliminating the last objections by commercial software publishers. People have been stung with bad programs so often that there is a vast area of mistrust. The reception of demo software via a popular radio show can be a big help in building confidence.

The National Network is not a wired net like CBS or a satellite net like NBC since the business of broadcasting software is still young, rather it is supplied to radio stations and cable net operators for local transmission. The idea is proving very popular and radio stations all over the U.S. are picking up the program. Softcast is in negotiation with some of the largest TV cable operators to provide a PC channel with software transmission on the cable throughout the United States. The PC channel would not be limited to a half hour per week, but could become a 7 day, round the clock operation.

Support for the programs is provided by both national and local advertisers and the show includes a current library of public domain software and demos of commercial programs. To get Softcast in your area, talk to your local radio stations and cable TV networks and have them contact: Softcast Corporation 2565-152nd Ave. N.E. Redmond, WA 98052 (206) 881-9537

Before you get your Shuttle Communicator modem, you can record the transmissions on a tape recorder and play them

through the Shuttle after you receive it. The system has been shown to be almost fool-proof. The acid test has been the reception of software broadcast from a 1,000 watt AM station, in winter, at 9:00 PM. In fact, a Dutch station broadcast BASIC software over international short wave in AM and it was received in New York and recorded. The software was then fed to the cassette port of a SOL computer and it worked just fine. This happened back in 1978 and these software broadcasts still continue being very popular in Europe. The National Digital Network has agreements with the Dutch radio to exchange tapes of software.

In the beginning of personal computing, the FCC would not permit the transmission of ASCII code by hams. This shut off the development of amateur radio as a medium of software transmission at a time when hams could have made a real contribution. These restrictions have since been lifted.

It has been predicted that the future of home computing is a part of an overall home entertainment and communication system who's components would include a computer keyboard unit. The computer keyboard unit would be connected to one or more computer channels on the cable for inter-active computing. The CD unit and VCR would act as the mass storage devices for the computer as well as the video components. This is an idea who's time must come and the success of the National Digital Network will help make it a reality. ●